

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1339 of 2007

Pradeep B. Mandyan

Petitioner

Vs.

Pushpa Badlani & ors.

Respondents

Petitioner in person.

Mr.Prakash Naik for resp.nos.1 to 5.

Mr.D.R.More, APP for State.

CORAM: B.H.MARLAPALLE, J.

October 11, 2007.

P.C.

. The petitioner is a learned member of the Bar
and he has been impleaded as an accused (accused
no.1) in Criminal Complaint No.701 of 2004 for the
offence punishable under Section 465 read with
Section 120-B of the Indian Penal Code. The trial
Court had issued process against the accused.
Subsequently the present petitioner filed an
application under Section 245(2) of Cr.P.C. for
being discharged and the said application marked as
Exhibit 31 came to be rejected on 3/4/2007.

. Admittedly the order passed on 3/4/2007 has
not been challenged by filing revision application
under Section 397 of Cr.P.C. before the Sessions

Court. Even the order of issuance of process was not challenged before filing an application under Section 245(2) of Cr.P.C.

. This petition filed under Article 227 of the Constitution read with Section 482 of Cr.P.C. seeks to invoke the inherent powers of this Court to quash the proceedings in Criminal Complaint No.701 of 2004. The petitioner has referred to the averments made in the complaint, the letter dated 13/9/2006 addressed by the SDO, Ulhasnagar to Smt. Manoj Lalwani, accused no.2 and the order dated 3/4/2007 passed by the learned Judicial Magistrate, First Class at Ulhasnagar rejecting the application filed under Section 245(2) of Cr.P.C. and submitted that there is no case made out against the accused and when certified true copies of the documents are available, there cannot be any better evidence to allow the complaint before the trial Court. The petitioner also referred to the decision of this Court in the case of Bhanu M. Vakil v. Chandra Oshiram Keswani & anr. **[1991 Cri.L.J. 2819]** and Vishwanath Ramkrishna Patil and anr. vs. Ashok Murlidhar Sonar & anr. **[2006 (5) Mh.L.J. 671]**. He has also placed reliance on the decision in the case of M/s. Zandu

Pharmaceutical Works Ltd. & ors. Vs. Md. Sharaful

Haque & ors. **[AIR 2005 SC 9]**.

. In the case of Vishwanath Patil (Supra) though the learned Single Judge referred to the decision of this Court in the case of V.K. Jain & ors. Vs. Pratap V. Padode & anr. **[2005 (3) Mh.L.J. 778]**, it appears that none of the parties had invited the attention of the learned Judge to the fact that the said decision was challenged before the Apex Court and the SLP was dismissed. It is not a question of denying remedy under Section 482 of Cr.P.C. but it is more a question of alternative and efficacious remedy to be invoked by the aggrieved party by challenging the order of issue of process before the party approaches this Court for invoking the inherent powers under Section 482 of Cr.P.C. When an alternative and equally efficacious remedy of a revision application is available, a petition under Article 227 of the Constitution need not be entertained by-passing the said remedy and in this regard I may usefully rely on the decision in the case of Sadhana Lodh Vs. National Insurance Co.

Ltd. & anr. **[(2003) 3 SCC 524]**.

. In the case of Madhu Limaye v. State of Maharashtra **[AIR 1978 SC 47]**, a three-Judge Bench laid down the following principles in relation to the exercise of inherent power of the High Court:

"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

. Even otherwise I am satisfied that in the instant case there is no reason to quash the proceedings and whether the certified true copies are fake or genuine will have to be decided by leading evidence in the complaint, even though photostat copies are placed on record either along with the

complaint or along with the application filed by the accused. Whether the letter dated 13/9/2006 deals with the factual position or not is a matter which will have to be decided after the parties adduce oral and documentary evidence. Therefore, at this stage it cannot be said that the complaint is frivolous or vexatious.

. The petition is rejected. Trial of the complaint is expedited and it be decided preferably by 31st March 2008. In addition, if the petitioner is being represented by a Lawyer before the trial Court, his appearance is exempted till the stage of recording statement under Section 313 of Cr.P.C.

(B.H.MARL